

Decision **PROPOSED DECISION OF ALJ RIZZO** (Mailed 2/2/2022)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Southern California Gas Company
(U904G) to Establish a Distributed
Energy Resources Services Tariff.

Application 14-08-007

**DECISION DENYING THE PETITION FOR MODIFICATION OF SOUTHERN
CALIFORNIA GAS COMPANY (U904) CONCERNING ITS EXPANSION OF ITS
DISTRIBUTED ENERGY RESOURCES SERVICES TARIFF**

Summary

This decision denies the October 20, 2020, petition for modification of Decision (D.) 15-10-049 filed by Southern California Gas Company, without prejudice. In that decision, we set requirements for Southern California Gas Company to establish a distributed energy resources tariff with modifications. Also in that decision, we denied a joint settlement agreement between Southern California Gas Company and the Public Advocates Office.

Southern California Gas Company's October 20, 2020, petition for modification of D.15-10-049 is denied, without prejudice, for the reasons set forth below. Application 14-08-007 is closed.

1. Background

On August 8, 2014, Southern California Gas Company (SoCalGas) filed Application (A.) 14-08-007 for California Public Utilities Commission

(Commission) approval of its proposed “fully elective, optional, nondiscriminatory tariff service which would provide its customers an opportunity to employ Distributed Energy Resources.”¹ SoCalGas’ Distributed Energy Resources Services Tariff (DERs Tariff) facilitates the adoption and use of “advanced energy systems including, but not limited to, combined heat and power (CHP), fuel cells, Waste Heat to Power (WHP), and mechanical drive technology applications” and provides opportunities for third-party participation.² These systems are fueled in whole (or in part) by natural gas, biogas, or other gaseous fuels (e.g., hydrogen).³

On December 26, 2015, the Commission issued Decision (D.) 15-10-049 granting Southern California Gas Company’s application to establish a DERs Tariff with modifications and denying joint settlement agreement between SoCalGas and the Public Advocates Office.

1.1. Procedural Background

On October 20, 2020, SoCalGas filed a petition for modification of D.15-10-049. SoCalGas’ petition for modification of D.15-10-049 asks for expansion of the types of technologies eligible for SoCalGas’ DERs Tariff.⁴ Specifically, SoCalGas seeks Commission authorization to: (1) expand the eligibility of technologies that qualify for the DERs Tariff to support resiliency and backup generation needs under D.15-10-049; and (2) establish and/or update the greenhouse gas (GHG) emission standards for DERs projects.⁵

¹ A.14-08-007 at 1.

² *Id.*

³ *Id.*

⁴ SoCalGas Petition for Modification, at 1-3.

⁵ *Id.*

On December 21, 2020, Southern California Generation Coalition (SCGC) filed: (1) a response opposing SoCalGas' petition for modification; and (2) a motion requesting acceptance of response for filing out of time.⁶ Generally, SCGC opposes SoCalGas' petition for modification because: (1) the petition for modification was not filed within one year of the effective date of Decision 15-10-049 pursuant to Rule 16.4(d); and (2) SoCalGas could offer non CHP technologies through a non-regulated affiliate that would not utilize utility assets.⁷

On December 23, 2020, the assigned Administrative Law Judge (ALJ) granted SCGC's motion to accept its untimely response to SoCalGas' petition for modification. The assigned ALJ also permitted SoCalGas to respond to SCGC's response to its petition for modification by January 15, 2021.

On August 2, 2021, the assigned ALJ issued a ruling requesting comment on policy questions relevant to SoCalGas' petition for modification of D.15-10-049.

On August 13, 2021, SoCalGas submitted opening comments in response to the August 2, 2021, ALJ's ruling. On August 20, 2021, reply comments were filed by Clean Energy and SCGC.

2. SoCalGas' Petition for Modification

As stated above, SoCalGas' DERs Tariff was approved five years ago in D.15-10-049. SoCalGas claims that there have been changes in resiliency needs and backup generation needs of customers due to the impacts of climate change that prompt electric Investor-Owned Utilities (IOUs) to proactively cut power via

⁶ SCGC Response to SoCalGas Petition for Modification at 1-3.

⁷ *Id.*

a Public Safety Power Shutoff (PSPS) event to reduce wildfire risk.⁸ SoCalGas also asserts that the modifications to its DERs Tariff will provide an opportunity for customers to enhance the resiliency of their energy.

3. SCGC Response

SCGC asserts that the Commission should deny SoCalGas' petition for modification. SCGC asserts: (1) SoCalGas fails to demonstrate that it could not present its petition for modification within a year after the effective date of D.15-10-049 in violation of Rule 16.4(d); (2) SoCalGas explicitly proposes to expand the scope of its DERs Tariff to projects that would consume nonrenewable fuel in violation of the Commission's environmental standards; (3) by expanding the "scope to cover all non-CHP technologies," SoCalGas would expand the reach of the DERs Tariff to markets that are adequately served by competitive markets; (4) SoCalGas could mitigate the negative impacts on competitive markets that would result from expanding the DERs Tariff to non-CHP technologies by offering the non-CHP technologies through a non-regulated affiliate that would not utilize utility assets; and (5) SoCalGas ignored the guidance that the Commission provided in D.15-10-049 in case SoCalGas desired to submit a petition for modification or an application to expand the scope of the DERs Tariff to cover non-CHP technologies.⁹

SCGC also argues that SoCalGas should have tracked the costs to develop its petition for modification at least 60 days prior to the submission.¹⁰ SCGC

⁸ SoCalGas Petition for Modification at 4-6.

⁹ SCGC Response to SoCalGas Petition for Modification at 1-3.

¹⁰ *Id.* at 13.

contends that SoCalGas should present the costs for Commission review in the first rate case that follows the cost incurrence.¹¹

4. Clean Energy

Generally, Clean Energy supports SoCalGas' request for an expansion of eligible technologies to enhance resiliency.¹²

5. Discussion

5.1. Requirements for Revising a Commission Decision

Pub. Util. Code § 1708¹³ provides that the Commission, after appropriate notice, may alter one of its prior decisions:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

Under the Commission's Rules of Practice and Procedure (Rules), Rule 16.4 governs petitions for modification. Rule 16.4(d) states in part: "(d) Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition."

¹¹ *Id.* at 13.

¹² Clean Energy at 2-3.

¹³ Unless otherwise specified, all section references are to the Public Utilities Code.

Rule 16.4 also requires: “(b) A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.”

Timeliness Test: As stated above under Rule 16.4(d), a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. SoCalGas filed its petition for modification more than a year after the effective date of the underlying decision. For its part, SoCalGas asserts that material factual changes beyond the year of D.15-10-049 issuance have occurred pertaining to climate resiliency, which merit modifying its DERs Tariff.

Alternatively, SCGC argues that SoCalGas did not meet the timeliness test under Rule 16.4(d). SCGC asserts SoCalGas presents data, in its petition for modification, showing extreme weather causing major power outages around the time it filed its initial application and in the immediate year after the issuance of D.15-10-049.¹⁴ SCGC also claims that the long-term non-CHP technologies that SoCalGas proposes to offer through its expanded DERs Tariff were available in 2016. SCGC also contends that the ravages of climate change that cause a need for back-up generation were apparent in 2016.¹⁵ Therefore, SCGC reasons that SoCalGas’ justification for a modification of its DERs Tariff beyond the one-year requirement of Rule 16.4 has no merit.

¹⁴ SCGC Response to SoCalGas Petition for Modification, at 7-9.

¹⁵ *Id.*

Persuasiveness Test: Under Rule 16.4(b) if more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

SCGC argues, in addition to SoCalGas not meeting the Timeliness Test, that we should deny SoCalGas' petition for modification because SoCalGas explicitly proposes to expand the scope of its DERs Tariff to projects that would consume nonrenewable fuel in violation of the state's decarbonization standards.¹⁶ On the other hand, SoCalGas asserts that since the approval of its tariff five years ago, there have been significant changes in resiliency needs and backup generation needs of customers due to the impacts of climate change and grid impacts.¹⁷

5.2. SoCalGas' Petition for Modification is Rejected, Without Prejudice.

5.2.1. Timeliness and Persuasiveness

We disagree with SCGC that SoCalGas untimely filed its petition for modification under Rule 16.4. We agree with SoCalGas that resiliency needs and backup generation of customers due to the threat and impacts of climate change meet the threshold requirements for review of its petition for modification under Rule 16.4(d). However, for the reasons discussed below, we dismiss SoCalGas' petition for modification, without prejudice.

¹⁶ *Id.* at 8.

¹⁷ SoCalGas Petition for Modification at 2-3.

5.2.2. California has Statewide Goals for Using Cleaner and Renewable Fuels to Minimize Air Pollutants, and to Maximize Resiliency and Reliability Resources.

SoCalGas' petition for modification is inconsistent with the Commission's and the state's policy and regulatory goals to reduce GHG emissions and increase the use of clean, alternative backup generation for resiliency and reliability.

First, we are concerned that SoCalGas' petition for modification, as currently framed, unnecessarily expands the DERs Tariff to encompass technologies that use nonrenewable fuels. This runs afoul to the state's decarbonization goals and our efforts to rely on clean and renewable alternatives for resiliency purposes.¹⁸ We reject any increased use of fuel for resiliency that is not clean or renewable. Continued use of nonrenewable resources fails to shift toward cleaner and renewable resources, such as green hydrogen, biogas, or other renewable fuels, to meet the moment of increased resiliency and reliability.

This Commission has consistently signaled its commitment to move away from unclean temporary backup generation toward cleaner alternatives, while still ensuring the lights stay on for safe-to-energize customers in the event of a grid outage. For contextual purposes, in Rulemaking (R.) 19-09-009, the Commission held a multi-agency workshop in August 2020 that focused on transitioning to cleaner backup generation alternatives. In September 2020, R.19-09-009 issued a proposed framework for reserving temporary generation that encouraged the development of cleaner, alternative solutions. This framework, with modification, was adopted in D.21-01-018. D.21-01-018 ordered

¹⁸ D.21-01-018, Appendix A.

SoCalGas' counterpart, Pacific Gas & Electric Company (PG&E), to pilot a clean substation microgrid project at one of its substations for resiliency.¹⁹

Additionally, the Commission opened another proceeding, A.21-06-022, in which it is reviewing a new PG&E substation microgrid program to facilitate this transition to clean substation back up generation. Specifically in this proceeding, PG&E and stakeholders are litigating a framework that, among other things, is developing substation-level microgrid solutions to mitigate PSPS outages consistent with a pathway to transition to cleaner sources of generation pursuant to D.21-01-018. We highlight A.21-06-022 for illustrative purposes only, to demonstrate our commitment to advance renewable and clean energy resources for resiliency. We acknowledge that A.21-06-022 is focused on substation level back power, and therefore, is effectually distinguishable from what SoCalGas asks us to approve in its petition for modification. And so, while there are differences between these two cases, we are still not inclined to approve an expanded DERs Tariff for SoCalGas' customers where they are not encouraged or given a firm pathway to use renewable fuel.

Specifically, SoCalGas does not propose any mandatory requirement that its DERs Tariff will require a customer to transition toward or increase the amount of clean and/or renewable fuel for a DERs Tariff project. Logically, we can only conclude that if there is no policing of the fuels under this proposed DERs Tariff modification, nonrenewable fuels will likely be used.

Second, in D.15-10-049, the Commission required that any projects that SoCalGas pursued under the DERs Tariff must "meet prevailing SGIP efficiency and emission standards, which are in effect when the customer executes its DERs

¹⁹ The Request for Proposal for this pilot program was released on November 30, 2021. It is expected to be operable during the 2022 wildfire season.

contract.”²⁶ We explained that requiring tariff projects to meet the prevailing SGIP standards ensures that the DERs Tariff achieves the Commission’s environmental and decarbonization goals.²⁷

As SCGC shows,²⁰ the prevailing SGIP standards have changed since the issuance of D.15-10-049. In 2018, the Legislature passed, and the Governor approved, Senate Bill (SB) 700 extending the SGIP from January 1, 2021, to December 31, 2024.²⁸ In the course of extending the SGIP for four years, the Legislature determined that as of January 1, 2020, technologies that use nonrenewable fuels would not be eligible for incentives under the SGIP.

In implementing SB 700 in D.20-01-021, the Commission explicitly found that longer duration SGIP projects must provide GHG emissions reduction services pursuant to § 379.6. In D.20-01-021, we reasoned that longer duration SGIP storage projects are well suited to provide resiliency services during PSPS or other outage events but must also provide the grid and GHG emission reduction services required by § 379.6 and this Commission’s decarbonization regulations.²¹

SoCalGas’s petition for modification requests expansion of the DERs Tariff to “non-CHP technologies” that include “fuel cells that are fueled by natural gas” and “natural gas backup generators.”³¹ Thus, the petition for modification explicitly expands the scope of the DERs Tariff to generation technologies that use a nonrenewable fuel. We find that the petition for modification does not limit the DERs Tariff to projects that would meet the prevailing SGIP standards, nor would the petition for modification limit the DERs Tariff to projects that meet

²⁰ SCGC Response to SoCalGas Petition for Modification at 9.

²¹ D.20-01-021 at 57.

the Commission's decarbonization standards, including a transition toward cleaner, renewable backup generation resources. In short, the proposed modification to the DERs Tariff does not comply with the requirements of D.15-10-049³² or D.21-01-018.²²

Third, ~~SoCalGas's petition for modification focuses on back-up power as well as longer term projects. Yet, in D.20-01-021, we prohibited the use of SGIP incentives for projects intended to be used only or primarily to provide backup power.³³ Thus, we agree with SCGC that the expansion of the DERs Tariff to backup projects is impermissible because the expansion violates prevailing SGIP standards that ensure that the DERs Tariff achieves the Commission's regulations.²³~~ in D.15-10-049, we held that SoCalGas has the option to consider other venues to advance its corporate strategic goals.²³ This includes using the provision of DERs through an unregulated affiliate, which SoCalGas' parent company, Sempra, is already doing, on a non-tariffed basis subject to the conditions for offering products and services that are specified in our Affiliate Transaction Rules. We agree with SCGC that the potential negative effect of utility participation in competitive markets to provide those technologies and the potential for ratepayers subsidies could be mitigated if the technologies were offered through an unregulated affiliate of SoCalGas rather than by the utility;²⁴ while remaining in compliance with our Affiliate Transaction Rules. We support,

²² D.21-01-018, Appendix A.

²³ D.15-10-049 at 56-57

²³²⁴ SCGC Response to SoCalGas Petition for Modification at 1011.

in principle, the transition from ratepayer subsidized programs of existing or new technologies to non-ratepayer subsidized competitive markets.²⁵

In conclusion, we reject SoCalGas' petition for modification without prejudice. We are unconvinced the requested modifications are necessary to meet the moment of increased reliability and resiliency in the wake of extreme weather and a strained electrical grid while at the same time, satisfying the state's decarbonization goals.

6. Conclusion

This decision denies the October 20, 2020, Petition for Modification of D.15-10-049 filed by Southern California Gas Company without prejudice.

7. Comments on Proposed Decision

The proposed decision of ALJ Colin Rizzo in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on February 22, 2022, by Southern California Gas Company and the National Fuel Cell Research Center. No party filed reply comments.

We have carefully considered the suggested changes proposed by parties in their comments to this Decision. Where discussed below, the relevant changes have also been made in the Decision, as appropriate.

8. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Colin Rizzo is the assigned ALJ in this proceeding.

²⁵ [D.15-10-049 at 109.](#)

Findings of Fact

1. SoCalGas requests that D.15-10-049 be modified to: (1) expand the eligibility of technologies that qualify for the distributed energy resources (DERs) tariff to support resiliency and backup generation needs under D.15-10-049; and (2) establish and/or update the greenhouse gas (GHG) emission standards for DERs projects.

2. SoCalGas' petition for modification was not filed within one year of the issuance of D.15-10-049.

3. SoCalGas' petition for modification was opposed by Southern California Generation Coalition.

4. SoCalGas' petition for modification is not supported by the record.

5. The record demonstrates SoCalGas had a timely opportunity to file a petition for modification of its DERs Tariff as climate impacts and grid outages were occurring, with increased intensity.

6. SoCalGas' petition for modification proposes to unnecessarily expand the DERs Tariff to cover technologies that use nonrenewable fuels, running afoul of the state's decarbonization goals and our efforts to rely on clean and renewable alternatives for resiliency purposes, consistent with D.21-01-018, as customers were not required to transition toward or increase the amount of clean and/or renewable fuel.

Conclusions of Law

1. It is reasonable to deny SoCalGas' petition for modification of Decision 15-10-049.

2. It is reasonable that this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The October 20, 2020, petition for modification of Decision 15-10-049 filed by Southern California Gas Company is denied.
2. Application 14-08-007 is closed.

This order is effective today.

Dated _____, at San Francisco, California

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